

Abraham Lincoln papers

Abraham Lincoln, Fragment on Judicial Supremacy and Dred Scott¹, [December 1856]

1 In this document, probably written during the December, 1856 term of the Supreme Court when the Dred Scott case was being argued for the final time, Lincoln contemplated not so much the substance of that case, but some of its broader constitutional implications. Implicit are his misgivings about judicial supremacy in a republic where the people are sovereign.

What would be the effect of this, if it should ever be the creed of a dominant party in the nation? Let us analyse, and consider it—

It affirms that ever decision that whatever the Supreme Court may decide as to the Constitutional restrictions on the power of a territorial Legislature, in regard to slavery in the territory, must be obeyed, and enforced by all the departments of the federal government—

Now, if this is sound, as to this particular constitutional question, it is equally sound of all constitutional questions; so that the proposition substantially is “Whatever decision the Supreme court makes on any constitutional question, must be obeyed, and enforced by all the departments of the federal government”—

Again, it is not the full scope of this creed, that if the Supreme Court, having the particular question before them, shall decide that Dred Scott is a slave, the executive department must enforce the decision against Dred Scott—² If this were it's full scope, it is presumed, no one would controvert its correctness— But in this narrow scope, there is no room for the Legislative department to enforce the decision; while the creed affirms that all the departments must enforce it— The creed, then, has a broader scope; and what is it? It is this; that so soon as the Supreme Court decides that Dred Scott is a slave, the whole community must decide that not only Dred Scott, but that all persons in like condition, are rightfully slaves

2 Lincoln seems to mean and may have intended to write “is it not the full scope” at the beginning of the sentence.